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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,841	01/09/2002	Philip C. Hwang	RPC 0598 PUS	7374

7590 07/15/2003
Konstantine J. Diamond
4010 East 26th Street
Los Angeles, CA 90023

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/15/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,841

Applicant(s)

HWANG, PHILIP C. *CW*

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Specification

1. The first line of the specification appears to lack a reference to every patent in the lineage of the instant application. Applicant is required to correct the deficiency in the specification in response to this Office action.

Claim Rejections - 35 USC § 112

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the intermediate edges" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-7 and 9-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11, 13, 14, and 22-25 of U.S. Patent No. 5,992,673. Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a container having two lid portions hinged together for cooperative movement with respect to the container body and the lid portions being detachable from the container body. The patent claims are silent regarding an angle at which detachment occurs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the more broad language of "detachable" as set forth in the patent claims to negate a specific angle of inclination for removal of the lid portions.

5. Claims 1-7 and 9-24 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 and 4-32 of U.S. Patent No. 6,036,049. Although the conflicting claims are not identical, they are not patentably distinct from each other because each teaches a container having two lid portions hinged together for cooperative movement with respect to the container body and the lid portions being detachable from the container body. The patent claims teach the lid portions detach from the container body at an angle less than 180°. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a range of angles for detachment of the lid portions from the container body (i.e., provide more broad terms).

Claim Rejections - 35 USC § 103

6. Claims 1, 2, and 5 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hoftman (US 5,938,063).

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Hoftman teaches the lid is removed from the bottom at an angle greater than 100°.

Wherein 180° is greater than 100°, the container of Hoftman anticipates, or in the alternative, renders the claimed obvious

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoftman.

Hoftman is silent regarding the pivot member being of one-piece construction with the first side wall.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pivot member of one-piece construction with the first side wall, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoftman in view of Paxton.

Hoftman teaches the claimed container except for dual lid members hingedly attached.

Paxton teaches it is known to provide a lid with two lid members attached along one edge of each.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide dual lid members hingedly attached along one edge of each to the container of Hoftman. Doing so allows for opening only a portion of the container as necessary and to store the removed lid conveniently within the container bottom.

Allowable Subject Matter

9. Claims 6,7,9,11, and 18-26 would be allowable if rewritten or amended to overcome the non-statutory double patenting rejection set forth in this Office action.

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10. Claims 10 and 13-17 would be allowable if rewritten to overcome the non-statutory double patenting rejection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

12. The double patenting rejection previously set forth is maintained and repeated herein. The information regarding recent case law, *In re Goodman*, was not available to the examiner and applicant prior to the filing of the amendment.

Conclusion

13. This Office action is made non-final.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302 or (703) 872-9303 for after final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-____ on the date shown below:

Typed or printed name of person signing this certificate

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Signature _____

Date _____

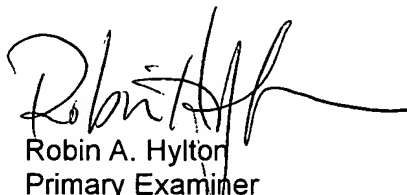
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
July 12, 2003


Robin A. Hylton
Primary Examiner
GAU 3727